

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

MICHAEL WHITFIELD,

Plaintiff,

v.

NEVADA STATE PERSONNEL, *et al.*,

Defendants.

Case No. 3:20-cv-00643-MMD-WGC

ORDER

Pro se Plaintiff Michael Whitfield brings this action under Title VII. (ECF No. 1-1.) Although Plaintiff filed his complaint, he did not file an application to proceed *in forma pauperis*, nor did he pay the \$400 filing fee. Before the Court is a Report and Recommendation (“R&R”) of United States Magistrate William G. Cobb (ECF No. 3), recommending the Court dismiss Plaintiff’s complaint because it is duplicative of another pending case, *Whitfield v. Nevada State Personnel*, Case No. 3:20-cv-00637-MMD-WGC (“the 637 case”). Plaintiff filed an objection to the R&R. (ECF No. 4 (“Objection”).) Because the Court agrees with Judge Cobb’s analysis and as further explained below, the Court will accept the R&R and will dismiss Plaintiff’s case.

This Court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). Where a party timely objects to a magistrate judge’s report and recommendation, then the Court is required to “make a de novo determination of those portions of the [report and recommendation] to which objection is made.” *Id.* The Court’s review is thus de novo because Plaintiff filed his Objection. (ECF No. 4.)

Plaintiff’s complaint in this action is identical to the complaint he filed in the 637

1 case.¹ (ECF No. 1-1.) Both complaints allege claims under the Fourteenth Amendment
 2 due process clause, claims for disparate treatment and impact, claims for wrongful
 3 termination, and claims for a hostile work environment. (*Id.* at 11-13.) Because there is no
 4 difference between the two complaints, Judge Cobb recommends dismissing the later-
 5 filed action. (ECF No. 3 at 2.) The Court agrees.

6 “Plaintiffs generally have no right to maintain two separate actions involving the
 7 same subject matter at the same time in the same court and against the same defendant.”
 8 *Adams v. Cal. Dep’t of Health Servs.*, 487 F.3d 684, 688 (9th Cir. 2007), *overruled on*
 9 *other grounds by Taylor v. Sturgell*, 553 U.S. 880 (2008). In the federal court system, “the
 10 general principle is to avoid duplicative litigation.” *Col. River Water Conservation Dist. v.*
 11 *United States*, 424 U.S. 800, 817 (1976). A district court may exercise its discretion to
 12 control its docket by dismissing a duplicative, later-filed action. *See id.*; *see also Curtis v.*
 13 *Citibank, N.A.*, 226 F.3d 133, 138 (2d Cir. 2000) (“[a]s part of its general power to
 14 administer its docket, a district court may stay or dismiss a suit that is duplicative of another
 15 federal court suit.”). Rule 41(b) of the Federal Rules of Civil Procedure grants federal
 16 district courts the authority to *sua sponte* dismiss actions. *See Ferdik v. Bonzelet*, 963
 17 F.2d 1258, 1260 (9th Cir. 1992) (holding a federal district court may dismiss a case as part
 18 of its “inherent power to control [its] docket”).

19 Plaintiff writes in his Objection that the cases are not the same. (ECF No. 4 at 1.)
 20 He reasons that the 637 case is “against Christina Senior and family” while this case is
 21 “against the State of Nevada about wrongful termination.” (*Id.*) But this is not reflected in
 22 the complaints he has filed. The content is the same, the claims are the same, and the
 23 parties are the same. The Court finds that the duplicative case should be dismissed. The
 24 637 case may proceed, and Plaintiff may file any claims not covered by the 637 case in a
 25 new action, provided he files the proper application to proceed *in forma pauperis* or pays
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27 ¹Plaintiff’s complaint in the other case was accompanied by 19 exhibits which are
 28 not present here. *Whitfield v. Nev. State Pers.*, Case No. 3:20-cv-00637-MMD-WGC (ECF
 No. 1).

1 the \$400 filing fee.

2 It is therefore ordered that Plaintiff's objection (ECF No. 4) to the Report and
3 Recommendation of U.S. Magistrate Judge William G. Cobb is overruled. The Report and
4 Recommendation of U.S. Magistrate Judge William G. Cobb (ECF No. 3) is accepted in
5 part, and rejected in part, as provided herein.

6 It is further ordered that this case is dismissed as duplicative of Case No. 3:20-cv-
7 00637-MMD-WGC.

8 The Clerk of Court is directed to enter judgment accordingly and close this case.

9 DATED THIS 18th Day of March 2021.

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MIRANDA M. DU
13 CHIEF UNITED STATES DISTRICT JUDGE
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